

IN THE MATTER OF	:	BEFORE THE
ED SCHERL	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 08-023V

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DECISION AND ORDER

On June 23, 2008, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of Ed Scherl for variances to reduce the 100-foot setback from a residential district to 44 feet for an existing metal building and to 28 feet for an existing parking area in a CE-CLI (Corridor Employment-Continuing Light Industrial) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").

The Petitioner provided certification that notice of the hearing was advertised and stated the property was posted as required by the Howard County Code.¹ I viewed the property as required by the Hearing Examiner Rules of Procedure.

James Lupinek, Esquire, represented the property owner. Ed Scherl, Julio Alves, and Walter Alves testified in favor of the petition. No one testified in opposition to the petition.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. The subject property is situated on the southwest side of Lynn Bluff Court about 1,350 feet northwest of its intersection with US 1 and is also known as 9595 Lynn Bluff Court (the

¹ Julio Alves stated the sign was posted but fell down and that the posting certification papers were lost. The Property was not posted when I visited it on July 19.

"Property"). The Property is located in the 6th Election District and is identified on Tax Map 47, Grid 23, as Parcel 910, Lot C.

2. The 6.28-acre, slightly irregular shaped Property was created with an approved subdivision plat for the US 1 Joint Venture subdivision. The 1988 SDP approved was for a construction equipment sales and repair business. The Property is currently the site of an existing motor vehicle auction business. This existing use, contrary to the approved SDP, includes a much enlarged stone and asphalt parking/storage area and several buildings.

3. A broad entrance provides access to the Property from the Lynn Bluff Court cul-de-sac turnaround. From the entrance, the Property widens into a large parking area, which functions as a vehicle storage and circulation area and covers the bulk of the Property. A one-story modular office building lies about 245 feet from the entrance in the southwest portion of the site. Two metal accessory buildings are situated to the rear of and about 110 feet northwest the office building.

Situated in the southeast section of the site, the area pertinent to this variance request, is a metal one-story, multiple-bay garage, which lies about 125 feet southwest of the office building. To the garage's east are two metal accessory buildings. A portion of the parking area is only 28 feet from the residential district to the south. The two metal buildings encroach into the 100-foot setback from the residential district, with one building situated about 44 feet from the residential zone.

4. The Property has a moderate upward slope toward the north lot line. It is predominately open, with a few trees and other vegetation along the perimeter.

5. Vicinal Properties. To the Property's south, closest to the area of the variance requests, is an R-A-15 (Residential: Apartment) property improved by the multi-building

Country Meadows apartment community. The area closest to the Property is a landscape buffer and parking lot, and the closest apartment building lies about 140 feet away. To the west, the R-SC (Residential: Single Attached) properties are improved with single-family detached dwellings. To the north, Lot A of the US 1 Joint Venture is also zoned CE-CLI and is improved with a large, multi-tenant warehouse building. To the east, the CE-CLI zoned Lot D-4 is a pipestem lot developed as a contractor's office and storage yard. Across the pipestem portion of Lot D-4 is a self-storage facility.

6. Roads. Santa Barbara Court has about 40 feet of paving within an existing 80-foot right-of-way. The posted speed limit is 25 miles per hour, and within the cul-de-sac, 15 miles per hour.

7. The Property is served by public water and sewer.

8. The General Plan's 2000-2020 Policies Map designates the Property as "Residential Area and Redevelopment Corridor."

9. The Petitioner is requesting a retroactive variance to reduce the 100-foot setback from a residential district required by Section 127.2.E.4.c to 44 feet for an existing metal building and to 28 feet for an existing parking area.

10. According to Petitioner's Exhibit 1, the Petitioner is the lessee.

11. Walter Alves testified it would be inconvenient and an economic hardship to move the encroaching building.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. That section provides that a variance may be granted only if all of the following determinations are made:

- (1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.
- (2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.
- (3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.
- (4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance does not comply with Sections 130.B.2.a(1) through (4), and therefore must be denied.

1. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651

A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property is relatively large compared to most of the other lots in the CE-CLI-zoned lots in the same subdivision and across US 1. The sloped areas have no direct bearing on the level area where the parking area and accessory buildings encroach into the setback. When questioned, the Petitioner offered no evidence or testimony of Property's uniqueness and why it causes him practical difficulty or unnecessary hardship in complying with the 100-foot setback, where there appears to be ample room on the site to relocate the offending building and parking area outside that 100 setback. The Petitioner therefore fails to meet the first prong of the variance test.

2. Section 130.B.2.a(2) requires me to determine that the granting of the variances will not alter the essential character of the neighborhood or district in which the Property is located, will not substantially impair the appropriate use or development of adjacent property, and will not be detrimental to the public welfare. The purpose of the 100-foot setback, as applied to the uses that do not conform to SDP 88-194, is to ensure a significant buffer between non-residential and residential uses. There being a legislative presumption that encroachments into the 100-foot setback will impair the use of adjacent property, and where, as here, the non-residential use is only 28 feet from the residential zoning district line, I conclude the proposed uses, as varied, will necessarily impair the appropriate use of adjacent property, contrary to Section 130.B.2.a(2).

3. The practical difficulty in complying strictly with the setback regulation arises from the Petitioner's action or actions under his control. As such, the practical difficulties or hardships are self-created, contrary to Section 130.B.2.a(3).

4. Section 130.B.2.a(4) requires me to determine if the variances are the minimum necessary to afford relief. I must necessarily conclude they are not. Under this standard, the requested variance must be the minimum that will make possible the reasonable use of land, building, or structures. Because the offending building and parking area may be relocated elsewhere on the site, the requested setback variance is not the minimum necessary.

ORDER

Based upon the foregoing, it is this 7th day of July 2008, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of Ed Scherl for variances to reduce the 100-foot setback from a residential district to 44 feet for an existing metal building and to 28 feet for and existing parking area in a CE-CLI (Corridor Employment-Continuing Light Industrial) Zoning District are **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

MICHELE L. LEFAIVRE
Michele L. LeFaivre

Date Mailed:

7/8/08

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.